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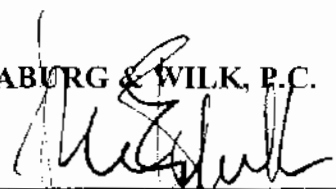
6 SUPERIOR COURT OF ARIZONA  
7 MARICOPA COUNTY

8 ARIZONA CORPORATION COMMISSION,  
9 Plaintiff,  
10 v.  
11 AMERICAN NATIONAL MORTGAGE  
12 PARTNERS, L.L.C., et al.  
13 Defendants.

Case No: CV2003-005724  
**MOTION TO AUTHORIZE  
SETTLEMENT REGARDING  
PONTCHARTRAIN REALTY FUND, INC.  
AND PONTCHARTRAIN REALTY FUND,  
LLC.**  
(Assigned to the Honorable J. Richard Gama)

14 James C. Sell, the court appointed Receiver in the above-referenced matter, through  
15 counsel of record undersigned, hereby requests that this Court enter an order authorizing the  
16 Receiver to enter into the Settlement Agreement which is attached hereto as Exhibit "A" and  
17 incorporated herein in its entirety by reference (the "Settlement Agreement").

18 This motion is based upon the following Memorandum of Points and Authorities.  
19 DATED this 4 day of December, 2003.

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22 **JABURG & WILK, P.C.**  
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25 Lawrence E. Wilk  
26 Attorneys for James C. Sell

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JABURG & WILK, P.C.  
ATTORNEYS AT LAW  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. Procedural Background

3 1. On or about March 24, 2003, the Arizona Corporation Commission caused to be  
4 filed, in the Superior Court in and for the State of Arizona, a Complaint in the above-captioned  
5 matter against numerous individual defendants and entities, seeking the appointment of a  
6 Receiver over the named Defendants.

7 2. After notice and hearing, the Court, on April 2, 2003, issued its Order Appointing  
8 Receiver, appointing James C. Sell as Receiver for the approximately 100 entities named in the  
9 Receivership Complaint.

10 3. American National Mortgage Partners, LLC and ANMP 74<sup>th</sup> ST., LLC were  
11 specifically excluded from the Order due to the filing of Chapter 11 bankruptcy proceedings  
12 initiated in the United States Bankruptcy Court for the District of Arizona, on behalf of each  
13 entity, Cause Nos. 03-03803 PHX RJH and 03-03799 PHX RJH respectively.

14 4. On or about May 15, 2003, after having obtained Orders Lifting the Automatic  
15 Stay of 11 U.S.C. § 362 in the Bankruptcy Proceedings, this Court issued its First Amended  
16 Order Appointing Receiver for the sole purpose of including American National Partners, LLC  
17 and ANMP 74<sup>TH</sup> ST., LLC as additional parties subject to the Receivership Order. James C. Sell  
18 was appointed under the First Amended Order as Receiver for these two entities, and was to serve  
19 as the responsible party for these entities in the pending bankruptcy proceedings.

20 5. On or about August 22, 2003, the Court entered the Second Order Appointing  
21 Receiver, which was entered for the specific purpose of naming additional parties.

22 6. Paragraph 5 of the Receivership Order provides as follows:

23 5. All persons, including Defendants and their officers, agents,  
24 servants, employees, attorneys, and all persons in active  
25 concert or participation with them, who receive actual notice  
26 of this Order by personal service or otherwise, are enjoined  
27 from in any way interfering with the operation of the  
28 Receivership or in any way disturbing the receivership assets  
and from filing or prosecuting any actions or proceedings  
which involve the Receiver or which affect the Receivership

1 Assets, specifically including any proceeding initiated  
2 pursuant to the United States Bankruptcy Code, except with  
3 the prior permission of this Court or the Bankruptcy Court as  
4 appropriate. Any actions so authorized to determine  
5 disputes relating to Receivership Assets shall be filed in this  
6 Court or the Bankruptcy Court as appropriate..

7 7. In pursuit of his duties under the terms of the Receivership Order, on or about  
8 December 4, 2003, the Receiver as Receiver for Pontchartrain Realty Fund, Inc. and  
9 Pontchartrain Realty Fund, LLC (hereinafter collectively referred to as "Pontchartrain") entered  
10 into a Settlement Agreement with Dan Walen ("Walen") and Dass W L.L.C. ("Dass"). The  
11 purpose of the Agreement is to resolve issues regarding a judgment obtained by Walen and Dass  
12 against Pontchartrain LLC and the attempt by Walen and Dass to obtain a judgment against  
13 Pontchartrain Inc. and others as well.

14 II. Factual Background

15 1. On or about October 29, 2002, Walen and Dass filed an action in Maricopa County  
16 Superior Court, Case No. CV 2002-015599 (the "Pontchartrain Action") and obtained a judgment  
17 against Pontchartrain LLC (but not Pontchartrain Inc.). Walen and Dass have now sought to  
18 obtain a judgment against Pontchartrain Inc. and others.

19 2. The Receivership Order enjoins creditors from prosecuting any action which  
20 involves the Receiver or which affects the Receivership Assets. This would include the continued  
21 prosecution of any claims against Pontchartrain and/or the collection against any Pontchartrain  
22 assets.

23 3. The remaining defendants in the Pontchartrain Action have motions pending to  
24 transfer the Pontchartrain Action to this proceeding so that the injunctive relief of this proceeding  
25 is extended to the remaining defendants.

26 4. Walen and Dass wish to prosecute their claim to judgment against Pontchartrain,  
27 Inc. and against the principals of Pontchartrain. Receiver has agreed that the injunctive relief be  
28

1 lifted to allow Walen and Dass to proceed with their lawsuit up to the point of obtaining a  
2 judgment against Pontchartrain, Inc. and other Defendants, but not allowing any action to collect  
3 from Pontchartrain or from any other person or entity with assets subject to the Receivership  
4 Order.

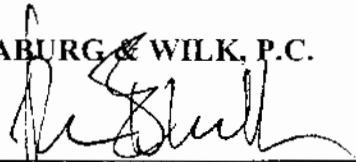
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6 III. Summary of Settlement Provisions<sup>1</sup>

7 Under the terms of the Settlement Agreement, Receiver has agreed that the injunctive  
8 relief as to Pontchartrain be lifted. In consideration for the stay lift, Walen and Dass have agreed  
9 not to take any action to collect any judgment from Pontchartrain or from any other person or  
10 entity with assets subject to the Receivership Order. Since Pontchartrain has no assets, the estate  
11 will not be adversely affected by the Settlement. Further, if Walen and/or Dass attempt to  
12 execute on any assets of the other Receivership entities, the Settlement will be given full force  
13 and effect, and Walen & Dass shall be precluded from seeking any recovery from the Receiver or  
14 Receivership estate. The Settlement protects the Receivership Estate from incurring fees in the  
15 pending Pontchartrain Action.

16  
17 Based upon the foregoing, the Receiver believes that it is in the best interest of the  
18 Receivership Estate to authorize the Receiver to enter into the Settlement Agreement in the  
19 Pontchartrain Action.

20  
21 DATED this 4 day of December, 2003.

22 JABURG & WILK, P.C.

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24 \_\_\_\_\_  
25 Lawrence E. Wilk  
26 Attorneys for James C. Sell, Receiver

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28 <sup>1</sup> The following represents a summary of the settlement terms. For a more detailed understanding of the terms  
of the settlement, refer to Exhibit "A".

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**ORIGINAL** filed and **COPY**  
of the foregoing hand-delivered  
this 4~~th~~ day of December, 2003 to:

The Honorable Richard J. Gama  
MARICOPA COUNTY SUPERIOR COURT  
101 West Jefferson, ECB 611  
Phoenix, Arizona 85003-2243

The Honorable Cathy M. Holt.  
MARICOPA COUNTY SUPERIOR COURT  
101 West Jefferson, \_\_\_\_\_  
Phoenix, Arizona 85003-2243

**COPIES** of the foregoing mailed  
this 4~~th~~ day of December, 2003 to:

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19 and Doug Baxter*

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4 *Attorneys for Dellheim, Vescio and Owens in related proceedings*

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JARURG & WILK, P.C.  
ATTORNEYS AT LAW  
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SUITE 2000  
PHOENIX, ARIZONA 85012

A

## AGREEMENT

**THIS AGREEMENT** (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by JAMES C. SELL, as court appointed Receiver for PONTCHARTRAIN REALTY FUND, INC., and for PONTCHARTRAIN REALTY FUND, L.L.C. ("Receiver"), DAN WALLEN ("Walen") and DASS W L.L.C., ("Dass"). Receiver, Walen and Dass are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

## RECITALS

A. Walen and Dass are judgment creditors of PONTCHARTRAIN REALTY FUND, L.L.C. ("Pontchartrain LLC"), pursuant to a Judgment entered by the Maricopa County Superior Court on or about October 29, 2002, at Cause No. CV 2002-015599 (the "Pontchartrain Action"). Walen and Dass are currently seeking to obtain a judgment against PONTCHARTRAIN REALTY FUND, INC. ("Ponchartrain Inc.") and others in the Ponchartrain Action.

B. Receiver was appointed pursuant to an order dated April 2, 2003, as amended (the "Receivership Order"), entered in Maricopa County Superior Court in Arizona Corporation Commission v. American National Mortgage Partners, L.L.C., et. al, case no. CV2003-005724 (the "Receivership Action"). The Receivership Order empowers Receiver to take possession of and control assets of Pontchartrain.

C. The Receivership Order also enjoins all creditors from prosecuting any action to collect from the these Receivership Defendants or from any Receivership Assets, or from any other entity with assets subject to the Receivership Order, including the assets of Pontchartrain Inc. and Pontchartrain LLC, except with the prior permission of the Receivership Court.

D. The Parties have reached an agreement in order to allow Walen and Dass to proceed with the Ponchartrain Action to obtain a judgment against Ponchartrain Inc. while still protecting Receivership Assets from execution.

## TERMS

**THEREFORE**, in consideration of the mutual agreements of the Parties and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed as follows:

1. Agreement to Lift Injunction. The Receivership Order injunction against prosecuting any action against a Receivership Defendant or Receivership asset is hereby lifted to the extent necessary to allow Walen and Dass to pursue and obtain (if warranted) a judgment against Pontchartrain Inc.

2. Agreement Not to Execute. Walen and Dass waive any recourse against the Receivership entities and assets, and shall not attempt to satisfy the existing Pontchartrain Judgment or any other judgment obtained in the Pontchartrain Action by executing on or otherwise collecting from Pontchartrain LLC or Pontchartrain Inc. Any attempt by Walen or Dass to proceed against or collect from assets of Pontchartrain LLC or Pontchartrain Inc. shall constitute a breach of this Agreement, and the Receivership Order injunction shall be deemed to be in full force and effect as to such action against Pontchartrain LLC, and Pontchartrain Inc.

3. Disbursement of Recovery. To the extent that Walen and/or Dass shall recover on any judgments obtained in the Pontchartrain action from third parties, Walen and Dass agree that, after collection of an agreed upon minimal amount, the Receivership estate shall be entitled to an agreed upon percentage of all additional funds collected. The parties are still negotiating the amounts. Accordingly, this Agreement shall not be binding upon the Receiver or the Receivership estate until the amounts are agreed upon and incorporated in a signed addendum to the Agreement.

4. Delivery of Documents. The parties shall make available for review and copying all documents relevant to their investigation of the named Defendants in the Pontchartrain and Receivership actions.

5. Court Approval. The Parties acknowledge that this Agreement is effective only after approval by the Court in the Receivership Action and execution of the required amendment. The Parties shall make application for such approval on an expedited basis.

6. Binding Effect/Court Approvals. This Agreement and all of the provisions thereof will be binding upon and inure to the benefit of the Parties, their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, the terms of this Agreement shall not be binding upon the Parties until such time as all appropriate approvals have been entered by the appropriate Courts having jurisdiction over the Receivership Action.

7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument, and any Party may execute this Agreement by signing any such counterpart.

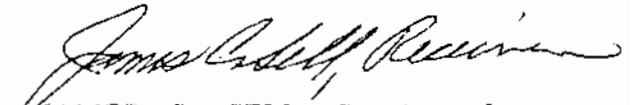
8. Governing Law; Venue. This Agreement was made and is to be performed in the State of Arizona. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona applicable to contracts made and to be performed entirely within Arizona, and any suit to enforce this Agreement or to assert any right or remedy under this Agreement shall be brought in the Receivership Action which shall be the exclusive venue for, and exclusive jurisdiction with respect to, any such suit.

9. Entire Agreement. This Agreement collectively sets forth the entire agreement between the Parties as to the subject matter of this Agreement, and is subject to no promise, warranty or representation not expressly set forth or referred to herein. This Agreement may not be modified except by an instrument in writing signed by the Party to be bound.

10. Attorneys Fees. In the event of litigation or arbitration proceedings brought by any Party to enforce the terms of this Agreement or otherwise relating directly or indirectly to the transactions and agreements reflected herein, the prevailing Party, in addition to any and all other rights and remedies, will be entitled to recover all of its costs of litigation or arbitration, including but not limited to all reasonable attorneys' fee and taxable costs. Attorneys fees claimed under this Section shall be awarded without reference to A.R.S. §12-341.01.

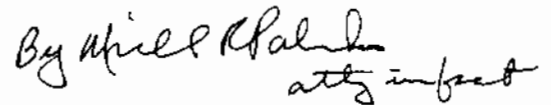
SIGNED as of the date first set forth above.

RECEIVER:



JAMES C. SELL, Receiver for  
Pontchartrain Realty Fund, Inc. and  
Receiver for Pontchartrain Realty  
Fund, L.L.C.

WALEN:

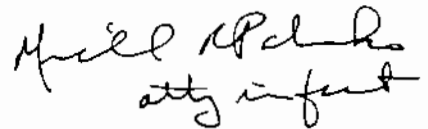
  
attly in fact

DAN WALEN, Individually

DASS:

DASS W L.L.C., an Arizona limited  
liability company

By  
Its

  
attly in fact